NEWS RELEASE

NEW YORK ATTORNEY GENERAL ELIOT SPITZER
CALIFORNIA ATTORNEY GENERAL BILL LOCKYER
CONNECTICUT ATTORNEY GENERAL RICHARD BLUMENTHAL
DISTRICT OF COLUMBIA CORPORATION COUNSEL ROBERT SPAGNOLETTI
ILLINOIS ATTORNEY GENERAL LISA MADIGAN
MAINE ATTORNEY GENERAL G. STEVEN ROWE
MARYLAND ATTORNEY GENERAL JOSEPH CURRAN, JR.
MASSACHUSETTS ATTORNEY GENERAL THOMAS REILLY
NEW HAMPSHIRE ATTORNEY GENERAL PETER HEED
NEW JERSEY ATTORNEY GENERAL PETER HARVEY
NEW MEXICO ATTORNEY GENERAL PATRICIA MADRID
PENNSYLVANIA ENVIRONMENTAL SECRETARY KATHLEEN McGINTY
RHODE ISLAND ATTORNEY GENERAL PATRICK LYNCH
VERMONT ATTORNEY GENERAL WILLIAM H. SORRELL
WISCONSIN ATTORNEY GENERAL PEG LAUTENSCHLAGER

Contact:

NY	Marc Violette	518-473-5525
CA	Tom Dresslar	916-324-5500
CT	Maura Fitzgerald	860-808-5324
DC	Peter LaVallee	202-724-5198
IL	Melissa Merz	312-814-2518
ME	Jerry Reid	207-626-8800
MD	Sean Caine	410-576-6357
MA	Sarah Nathan	617-727-2543
NH	Maureen Smith	603-271-3679
NJ	Peter Aseltine	609-292-4791
NM	Jon Goldstein	505-827-0314
PA	Kurt Knaus	717-787-1323
RI	Mike Healey	401-274-4400
VT	Kevin Leske	802-828-6902
WI	Brian Rieselman	608-266-7876

For immediate release:
November 17, 2003

STATES SEEK TO BLOCK HARMFUL NEW AIR RULE

Rule Sharply Weakens Clean Air Act; Violates Intent of Congress

A coalition of 14 states, the District of Columbia and numerous local governments today filed papers in federal court seeking to block implementation of a change to Clean Air Act regulations that will allow vast amounts of additional industrial pollution into the nation's skies.

The new rule written by the federal Environmental Protection Agency (EPA) is scheduled to take effect December 26. In their request for a stay, the states argue that the new rule violates the plain language of the Clean Air Act, conflicts with Congressional intent, and contradicts long-standing court rulings.

New York Attorney General Eliot Spitzer said: “It is a sad day in America when a coalition of states must go to federal court to defend the Clean Air Act against the misguided actions of the federal agency created to protect the environment. But in this matter, the EPA is standing with polluters instead of with the people it is supposed to protect, and the states have no choice but to take this action.”

California Attorney General Bill Lockyer, President of the National Association of Attorneys General, said: “This case provides the latest reminder of the Administration’s disturbing modus operandi: adopt policies that increase air pollution and try to gussy them up as ‘Clear Skies.’ We’re not fooled by the Orwellian clothing. This rule turns the Clean Air Act on its head. For the sake of the public’s health, we cannot afford to let the EPA succeed.”

Connecticut Attorney General Richard Blumenthal said: “This rollback means more smog and acid rain, more asthma, respiratory disease and even death for Connecticut and the nation. Given the dire threat to public health and the environment, and the strength of our case, the court should call a time out until we have the opportunity to show that these changes are illegal. The Bush Administration seeks to repeal the Clean Air Act by dictatorial edict, which it can’t legally do. In doing so, the Administration is sacrificing public health and the environment to advance the financial interests of its friends in the energy industry.”

District of Columbia Corporation Counsel Robert Spagnoletti said: “This rule change is a step backward. It threatens the air quality in our nation’s capital, presenting a potential health threat not only to our citizens, but also to the millions of visitors who come to Washington from across the country and around the world each year. We can do better, and, under the Clean Air Act, we must do better.”

Illinois Attorney General Lisa Madigan said: “When it comes to major roll-backs of provisions that protect public health and the environment, the Bush Administration is clearly a repeat offender. We will continue to go to court as long as it takes to protect people who walk to work every day, children who play in parks and the environment from massive weakenings of common sense protections.”

Maryland Attorney General Joseph Curran, Jr. said: “While the rule does not immediately take effect in Maryland, the stay is necessary to prevent further degradation of the air that could be caused by upwind sources.”

New Hampshire Attorney General Peter Heed said: “New Hampshire is bombarded with pollution from upwind states and, despite its strict air laws, needs improvements from upwind industries to protect public health and the environment. We are determined to challenge this new loophole designed to allow major polluters to avoid installing modern pollution controls. It is not only illegal, it is bad public policy.”

New Jersey Attorney General Peter Harvey said: “With this request for a stay, we are calling on the federal court to apply the brakes before the EPA deliberately drives the train of environmental enforcement off the tracks. The plain language of the Clean Air Act and common sense interpretation by the courts had us on track to achieve cleaner, healthier air. The EPA’s new rule, if permitted to take effect, will derail our efforts and result in more

pollution, more acid rain and more asthma and respiratory disease."

New Mexico Attorney General Patricia Madrid said: "The Clean Air Act is vital to the health of New Mexicans as well as the entire country. We cannot allow the federal government to weaken this law. Public health and the integrity of the environment will be the losers should the EPA be permitted to move in such a harmful direction."

Rhode Island Attorney General Patrick Lynch said: "This holiday season will bring lumps of coal to our citizens who yearn to breathe clean air, courtesy of President Bush, Big Business, and, sadly, the very agency that exists to protect our environment. The motion we filed today aims to stop EPA from making changes to the Clean Air Act that will line the pockets of the energy industry but will certainly not improve the quality of our air."

Vermont Attorney General William Sorrell said: "It should be an embarrassment to EPA that so many states have had to go to court to protect themselves from the harm that these new regulations will cause. Instead, EPA seems to wear this dismemberment of the Clean Air Act as a badge of honor. We will not sit idly by and let this happen."

The Clean Air Act requires existing industrial sources of air pollution to install modern air pollution controls when they are modified. While Congress intended pollution controls to be added for any modification that increases pollution, the EPA has allowed exemptions for "routine maintenance" to exclude routine work that would not increase pollution. From 1978 until earlier this year, EPA and the courts narrowly interpreted this exemption to cover work at a facility that, under common sense understanding, were truly maintenance projects.

However, in a rule announced just before Labor Day and published on October 27, the Bush Administration radically departed from this consistent interpretation. The new rule allows any modification to be classified as routine maintenance if it does not exceed 20 percent of the replacement cost of the unit -- even if it creates more pollution. As a result, the facility would not need to add pollution controls, which can reduce air pollution by as much as 95 percent.

For example, at a typical 1000 megawatt power plant with a replacement cost of $800 million, the new rule would exempt as routine maintenance any equipment replacement, upgrades and modifications that each cost less than $160 million - - no matter how many projects are undertaken - - regardless of whether the work results in increased air pollution.

The provision of the Clean Air Act affected by the new rule has been the basis of a series of enforcement actions taken by EPA and the states against dirty power plants and refineries. Settlements of these cases have required the installation of pollution controls, resulting in hundreds of thousands of tons of emission reductions annually. EPA's new routine maintenance rule, however, would exempt almost all of the 20,000 factories and power plants potentially covered by the rule from having to reduce their air pollution. Indeed, EPA's own analysis of the new rule indicates that at least 95 percent of the violations at issue in the enforcement cases would no longer trigger the need to add pollution controls.

In their motion for a stay, the states demonstrate that hundreds, perhaps thousands, of industrial facilities will be allowed under the new rule to undertake plant modifications that increase emissions, without installing pollution controls. Both EPA and industry sources have

asserted that there is a backlog of projects as manufacturers have been holding back on upgrades until this rule goes into effect in order not to build pollution controls into their facilities. Even if the court later throws out the new rule, there will be no way of undoing the harm that will occur when, in the interim, plant owners modify, upgrade, or extend the service life of their facilities without adding pollution controls, resulting in increased pollution for the rest of the life of the plant.

Additional air pollution permitted by the new rule will contribute to higher rates of premature mortality, respiratory disease, asthma attacks, acid rain, smog and other public health and environmental damage.

This case is closely related to another lawsuit filed by a similar coalition of states that challenged an earlier EPA rule, published December 31, 2002, that created other exemptions to the New Source Review (NSR) program of the Clean Air Act. The states have moved to consolidate the challenges to both rules and have also moved to stay the earlier set of exemptions. Those motions are under consideration by the U.S. Court of Appeals for the District of Columbia Circuit, which will also hear the underlying challenge to the two rules.

The Clean Air Act is the cornerstone of federal law designed to protect public health and the environment from the ill effects of air pollution. Although it has historically been strengthened since it was signed into law by President Nixon in 1970, the Bush Administration's NSR reforms significantly weaken one of the few tools available to control air pollution from older, dirtier industrial facilities.

The case was filed today in United States Court of Appeals for the District of Columbia Circuit.

The states participating in the stay motion are California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Vermont and Wisconsin.

#